


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554


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OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules To Facilitate Future)
Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)

PP Docket No. 93-253

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**COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION ON INTERIM LICENSING PROCEDURES**

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**COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION ON INTERIM LICENSING PROCEDURES**

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys,
hereby submits its comments with respect to appropriate procedures for the interim
licensing of Part 22 and Part 90 paging facilities during the pendency of the rulemaking
in the above-captioned docket.² As detailed below, the freeze imposed on the filing of

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² See *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, FCC 96-52 (Feb. 9, 1996) (Notice of Proposed Rule Making) ("Notice"). Comments on interim licensing procedures and policies are due on March 1, 1996; reply comments are due on March 11, 1996.

new applications and the procedures adopted for processing already filed applications are working great hardship on existing paging licensees and their customers.

Moreover, the Commission's proposal to permit secondary licensing of paging facilities while the issues raised in the *Notice* are resolved is not itself a sufficient solution to these problems. These comments thus outline recommendations for modifications to the freeze that seek to accommodate the legitimate needs of paging licensees to provide service to the public while addressing Commission concerns relating to the transition to market area licensing and the adoption of competitive bidding procedures.

I. INTRODUCTION AND SUMMARY

On February 8, 1996, the Commission adopted the *Notice*, proposing a major overhaul in the licensing procedures for all Part 22 and Part 90 paging frequencies.³ At the same time, the Commission imposed a freeze on the future acceptance of new applications for paging authorizations (with certain exceptions), and set forth its policies for the processing of applications filed prior to that date. The *Notice* requested

³ The *Notice* summarizes the proposals as follows:

[W]e propose to transition to a geographic licensing approach where we issue single licenses for geographic areas that encompass many sites, rather than individual licenses on a transmitter-by-transmitter basis. We also propose to adopt competitive bidding rules for mutually exclusive paging applications, so that available channels may be assigned rapidly to applicants who will expedite service to the public.

comment "on an expedited basis on whether, during the pendency of this proceeding, incumbents should be allowed to file new applications that would expand or modify their existing systems beyond their existing interference contours with such modifications receiving only secondary site authorization."⁴

Based on the text of the *Notice* and clarifications obtained from Commission staff, PCIA understands the freeze to have the following components:

Filing of New Applications

- In general, with the exceptions identified below, the Commission will not accept new applications for paging channels filed after the date the *Notice* was adopted.
- The freeze applies to private, internal use paging systems as well as facilities licensed to provide service to the public, whether on a "private carrier" or "common carrier" basis.
- This freeze on new applications applies to all of the paging channels -- the Part 22 UHF, VHF, and 931 MHz frequencies and the Part 90 shared frequencies (UHF, VHF, and five channels in the 929 MHz band) and 929 MHz exclusive frequencies.
- Incumbent licensees will be permitted to add sites to existing systems or modify existing sites so long as any additions or modifications do not expand the interference contour of the incumbent's existing system.⁵

⁴ *Id.*, ¶ 143.

⁵ A footnote to the discussion contained in the *Notice* concerning these permissible additions and modifications refers to the Commission's *proposed* formula for calculating 931 MHz interference contours. *Notice*, n. 271, ¶ 52. This reference has created confusion as to the nature of the interference contour used to define the changes permitted in all of the Part 22 frequencies -- whether the contour in any particular situation is to be determined pursuant to the Commission's existing Part 22 rules for each band or the formula proposed in the *Notice* (but proposed only in connection with the 931 MHz band).

- Such additions and modifications may be undertaken even if the service contour is changed.
- Such additions and modifications may be undertaken without obtaining prior Commission approval.
- Part 22 and Part 90 929 MHz paging licensees will be governed by this same standard.⁶
- Part 22 and Part 90 licensees that have obtained nationwide exclusivity on a paging channel will be permitted to file (and have processed) applications for additional or modified sites without any restriction.
- Transfer of control or assignment of authorization applications will continue to be processed under existing procedures.

Processing of Pending Applications

- The Commission will process pending applications filed prior to the adoption of the *Notice* so long as: (1) they are not mutually exclusive with other applications as of February 8, 1996, and (2) the relevant period for the filing of competing applications has expired as of February 8, 1996.
- Pending applications not meeting these tests will be held in abeyance until the rulemaking is concluded, and will be processed or dismissed in accordance with the eventually adopted rules.
- For 931 MHz applications, which are subject to a 60 day filing window from the date they are placed on public notice, any applications that appeared on public notice subsequent to the Commission's December 6,

⁶ Application of the interference contour basis for defining permissible changes at 929 MHz also creates confusion, since the protection granted by existing Commission Rules to Part 90 exclusive licensees is defined by a different standard. The *Notice's* discussion also leaves uncertain whether licensees in the Part 90 shared frequencies may make similar system modifications (subject, of course, to required frequency coordination procedures).

1995 public notice⁷ will be held in abeyance. In addition, any applications appearing on public notice through December 6, 1995, and that are subject to mutually exclusive proposals will be held in abeyance. Mutually exclusive applicants will not be permitted to enter into settlements to permit processing of the resulting modified proposals.

- According to the *Notice*, for lower band Part 22 channels, applications filed on or after January 8, 1995 will not be processed during the pendency of the rulemaking. As with 931 MHz applications, applications subject to mutually exclusive proposals will be held in abeyance, with no opportunity to reach a settlement.
- 929 MHz exclusive channel applications filed prior to adoption of the *Notice* will be processed, so long as there are no mutually exclusive proposals (which generally should not be present).
- The Commission has postponed action on pending requests for conditional and permanent exclusivity on 929 MHz channels.
- Applications to operate on non-exclusive (shared) Part 90 frequencies that were filed prior to adoption of the *Notice* will be processed by the Commission.

The freeze on new applications, the limited opportunities for service providers to expand or modify their systems, and the policies for the processing of pending applications are imposing substantial, but unnecessary, hardships on paging licensees and on the subscribers to paging services. Paging is a highly competitive, dynamic industry, where operators must be able to make changes in service areas in order to meet consumer needs and succeed in the marketplace. In addition, some of the frequencies covered by the Commission's freeze include private licensees, such as hospitals, that operate internal paging systems.

⁷ FCC Public Notice, "Wireless Narrowband Commercial Radio Service Information," Rpt. No. NCS-96-09 (Dec. 6, 1995).

Despite Commission recognition of the needs of paging licensees and the competitive operating environment, and despite the Commission's effort to provide some opportunity for licensees to make some modifications during the pendency of the freeze, the freeze in fact is substantially harming both paging consumers and paging providers. The entities most dramatically affected are small and medium-sized licensees, and they are the entities least able to withstand a protracted freeze.

To recognize the realities of the paging environment while trying to accommodate the Commission's planned transition to market area licensing and competitive bidding, PCIA recommends that the Commission take the following steps:

1. Immediately lift the freeze on the acceptance and processing of applications for shared channels;
2. Immediately lift the freeze on the acceptance and processing of applications for common carrier lower band frequencies; and
3. Permit the filing and processing of 929 MHz and 931 MHz applications where the spectrum is useful only to the incumbent licensee.

Grant of the relief requested by PCIA is warranted by the nature of the paging industry and the needs of paging customers, which distinguish this proceeding from the freezes imposed by the Commission in other circumstances. Moreover, prompt, effective relief is necessary in light of the high likelihood that action on the substantive rulemaking proposals and the subsequent processing and granting of applications will take months or even years.

Finally, Commission authorization of secondary licensing as the only modification of the freeze imposed in the *Notice* simply does not afford sufficient relief

to permit paging licensees to accommodate fully the needs of the public. Additional relief, as requested above, is required.

Adoption of PCIA's recommended interim processing procedures will best balance the competing considerations and most effectively further the public interest. PCIA urges the Commission to act promptly to expand the opportunities for paging licensees to respond to customer needs and marketplace pressures during the pendency of the subject rulemaking.

II. THE FREEZE IMPOSED BY THE COMMISSION UPON THE PAGING INDUSTRY IS CAUSING SUBSTANTIAL, BUT UNNECESSARY, PUBLIC HARM

A. The Paging Marketplace Is Robustly Competitive, and Paging Service Areas Are Highly Dynamic in Response to Consumer Need and Competitive Pressures

The Commission previously has found the paging marketplace to be robustly competitive,⁸ and this assessment is reflected in the *Notice*.⁹ Industry estimates show that there are between 500 and 600 paging operators providing service in the United

⁸ E.g., *Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1468 (1994) (Second Report and Order) ("*CMRS Second Report and Order*"); *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 10 FCC Rcd 8844, 8867-68 (1995) (First Report) ("*1995 CMRS Competition Annual Report*").

⁹ See *Notice*, ¶¶ 6-7.

States.¹⁰ Available statistics indicate that, in most large metropolitan areas, there are at least twelve¹¹ -- and in some markets as many as nineteen¹² -- facilities-based paging service providers. In addition, expanded marketing of pagers, resale, and other non-direct forms of distribution have intensified the competitive nature of the industry.

The effect of this competition in recent years has been to drive rates downward while dramatically increasing the number of paging subscribers. For example, Economic and Management Consultants International, Inc. estimated that the U.S. paging industry added 7.5 million pagers in 1994, resulting in total pagers in service at the end of 1994 of 27.3 million.¹³ This represented a 38 percent growth rate over the previous year, the second highest growth rate experienced by the paging industry since 1981.¹⁴ Radio Communications Reports has recently estimated that there are 34.1 million paging subscribers in the United States.¹⁵

This recent dramatic growth in the number of subscribers, accompanied by the decline in paging service rates and the emergence of innovative service offerings,

¹⁰ See 1995 CMRS Competition Annual Report, 10 FCC Rcd at 8854.

¹¹ *Id.*

¹² R. Ridley, 1993 Survey of Mobile Radio Paging Operators, COMM. (Sept. 1993).

¹³ Economic and Management Consultants International, Inc., The State of the U.S. Paging Industry: 1995, at 1 (June 1995) ("*EMCI 1995 Report*").

¹⁴ *Id.*

¹⁵ "Top 20 International Paging Markets," Radio Communications Reports at 10 (Jan. 22, 1996).

underscores the present highly competitive nature of the paging industry. In the face of this competition, and in order to meet the evolving needs of business and private consumers, many paging carriers must continually expand or modify their systems. Indeed, in recent years, the industry has seen many carriers seek to implement wide area paging systems that take into account the commuting and travel routes of subscribers. Similarly, carriers with adjoining but smaller coverage areas have entered into arrangements to permit their customers to take advantage of an expanded service area.

In addition to competitors licensed under Parts 22 and 90, Part 24 narrowband PCS licensees are now entering the marketplace.¹⁶ To date, licenses have been granted for nationwide and regional narrowband PCS service areas.¹⁷ Additional licenses will be awarded, pursuant to competitive bidding procedures, based on Rand McNally's Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs").¹⁸ The *Notice* reflects the Commission's perception that "[t]he introduction of narrowband PCS promises to provide additional competition, innovation, and growth to the paging industry."¹⁹

¹⁶ The Commission has noted its expectation that "narrowband PCS providers will offer advanced paging-like and messaging services." *1995 CMRS Competition Annual Report*, 10 FCC Rcd at 8859.

¹⁷ *Id.* at 8860-61.

¹⁸ *Id.*

¹⁹ *Notice*, ¶ 7.

Because of the current transmitter-based licensing system applied to most new or modified paging facilities, even relatively minor changes require prior Commission approval. In the case of Part 22 facilities, this means that applications must be placed on public notice prior to Commission action, with an opportunity for other entities to file competing applications or petitions to deny the original proposal. This requirement thus has slowed the ability of Part 22 operators to respond to marketplace pressures and consumer demand.²⁰ Similarly, even with the advent of exclusivity rules for some of the Part 90 frequencies, entities operating in the private paging channels also must continue to seek prior Commission approval for a majority of their system modifications and expansions.²¹ These application filing requirements thus play a significant role in the ability of paging carriers to adjust and expand their operations.

²⁰ This is one of the reasons that PCIA has supported adoption of market area licensing for the 931 MHz frequencies (although not for the lower band Part 22 frequencies). Likewise, one of PCIA's predecessor organizations, the National Association for Business and Educational Radio ("NABER"), initiated the adoption of rules providing for the grant of exclusive licenses in the 929 MHz band under Part 90.

²¹ These applications are not subject to a prior public notice requirement. They are, however, governed by frequency coordination requirements. As noted in note 1 *supra*, PCIA is the authorized frequency coordinator for a number of the Part 90 paging frequencies.

B. Private Licensees Use Part 90 Frequencies for Essential Internal Paging Systems

The Part 90 frequencies licensed on a shared basis are used not only by private carriers but also by eligible business licensees to provide in-building coverage and to meet other local paging needs. For example, hospitals and medical centers use these shared frequencies for in-house paging. Similarly, schools and colleges use internal paging systems, often as an adjunct to wide area paging services obtained from carriers. For some of these private licensees, it is essential that they have greater control over their paging operations -- in order to respond most effectively to medical emergencies, for example. Although used for internal paging operations, these systems likewise cannot make modifications or add coverage area without obtaining prior Commission approval for most changes.

C. The Commission's Recognition of the Needs of Part 22 and Part 90 Licensees To Continue To Make System Modifications Does Not Appear To Be Reflected in the Provisions of the Freeze

The *Notice* explicitly acknowledges the need of paging licensees to continue to operate dynamic businesses:

We are mindful that an across-the-board freeze on all applications could impair the ability of existing licensees to make certain necessary modifications to their systems to respond to consumer demand while the rulemaking is pending. It is our desire to allow incumbent licensees to

continue operating their businesses and meeting public demand for paging services during this rulemaking.²²

Commissioner Ness separately affirmed the Commission's intent to take "measures that will allow existing paging businesses to continue to meet customer demand during the pendency of this proceeding without undermining [Commission] objectives."²³ She further acknowledged that, "[p]aging is a thriving industry with established licensees who must regularly expand or modify their facilities in order to meet customer demand and increase their competitiveness in the market."²⁴ Commissioner Chong similarly noted that, "[i]n crafting our decision to manage a smooth transition, I have been very mindful that we do not inadvertently hinder the ability of paging carriers to either compete or continue to expand their businesses. To this end, we have attempted to take actions that will not impede competition, growth, and innovation in the paging market during the transition."²⁵

PCIA appreciates the Commission's recognition of the competitive environment in which paging carriers currently operate and the limitations imposed by transmitter-by-transmitter licensing, and the attempt to accommodate those conditions with the Commission's desire to achieve a successful transition to, where appropriate, market

²² *Notice*, ¶ 140.

²³ *Id.*, Separate Statement of Commissioner Susan Ness at 1.

²⁴ *Id.*

²⁵ *Id.*, Separate Statement of Commissioner Rachelle B. Chong at 2. Commissioner Chong also specifically sought input from the paging industry concerning the transition policies. *Id.*

based licensing. Unfortunately, as detailed below, the level of relief granted to paging licensees is not sufficient to permit rational system expansions and modifications.

These restrictions are particularly troubling in light of the fact that, in many cases, the contemplated expansion areas are of such a size or location as not to warrant interest from any other entity.²⁶ To paging licensees, it appears that they are being hamstrung in their ability to compete effectively and meet their obligations to provide service to the public in areas where there can be little expectation that, if the Commission adopts its market area licensing and competitive bidding proposals, there will be viable competing applicants.

²⁶ See, e.g., *Notice*, Separate Statement of Commissioner Susan Ness at 1 ("It is my understanding that over 70% of the pending non-mutually exclusive applications that we plan to process have been filed by incumbents, seeking to fill-in or incrementally expand coverage of their existing systems. The spectrum sought by these applicants is unlikely to be of practical value to anyone other than the applicant and yet it may be of critical importance to the incumbent's ability to maintain its position in this highly competitive market."); *id.*, ¶ 13 ("relatively little desirable spectrum . . . remains available for licensing" in the Part 22 lower bands); *id.*, ¶ 14 (931 MHz channels "also are scarce in virtually all major markets and most mid-sized markets"); *id.*, ¶ 18 (with respect to the exclusive 929 MHz channels, "sufficient spectrum still may not be available to allow licensing of any significant new systems on these frequencies").

D. The Paging Freeze Is Imposing and Will Continue To Impose Substantial Hardship on Paging Carriers in Their Ability To Provide Service to the Public and To Compete Effectively in the Messaging Marketplace

The freeze has far ranging impacts for all licensees in the paging marketplace, and each current operator has its own story to tell. While the terms of the freeze will permit certain limited modifications to be made, virtually all licensees will be impeded in their ability to expand operations in response to competitive initiatives from other operators in the same area and to meet the demands of their customers. This impact will be hardest felt by the small and medium-sized licensees, many of whom operate on shared Part 90 frequencies or lower band Part 22 frequencies.

Because of the existing licensing policies, many licensees, both large and small, have implemented business plans that call for system growth on an incremental basis.²⁷ Thus, these licensees have not submitted applications for all the facilities eventually contemplated for a system but instead have filed applications one at a time or as needed to meet coverage requirements or replace lost transmitter sites. These

²⁷ For smaller carriers, an incremental approach means that they can add one transmitter at a time, as their customer base grows and revenues increase, allowing them to afford additional construction activities. Given the one-year construction period associated with individual transmitter authorizations, many licensees cannot marshal the resources that would be necessary if they concurrently sought Commission approval for all facilities contemplated for a multi-transmitter system.

An incremental approach also allows licensees to adjust system design to take into account the performance and coverage characteristics of facilities placed in operation. Similarly, licensees can alter design plans in order more effectively to accommodate subscriber usage patterns.

rational business plans have now been brought to a halt. Reasonable and responsible expansion plans cannot now be implemented. Expanded coverage cannot now be added where necessary to take into account actual radio propagation performance or to respond to evolving customer demand. Agreements with customers to add new coverage for new customer locations cannot be fulfilled by many carriers. The loss of some transmitter locations cannot be replaced in light of suitable alternatives based on available tower sites, radio propagation characteristics, and/or local zoning restrictions.

Paging companies have identified to PCIA a number of specific harms that they will suffer. Some smaller companies, for example, have entered into arrangements with nearby licensees to permit their respective customers to obtain service throughout the combined service area. If all applications necessary to provide coverage to gaps between the existing licensed areas were not already filed, however, those gaps in service will remain until the rulemaking is completed and licensing begins anew.

As part of their business planning, carriers have identified new transmitter sites needed to expand their systems, have undertaken the necessary engineering work, have negotiated leases, and have prepared or begun to prepare applications. If those applications were still in process of being finalized for filing with the Commission (for example, they were being microfiched to comply with Commission requirements), the investments made to date may be lost. This is also true for those entities that have filed applications but were not lucky enough to reach the end of the applicable window for filing mutually exclusive applications. Moreover, to protect system design, a

licensee may have to lease proposed tower sites even though the sites cannot be currently used, or risk losing a necessary location.

Carriers have ordered equipment, and now either must cancel those orders or take delivery, pay the costs, and keep the equipment in storage until this proceeding is resolved and applications are processed once again.

As the Commission is aware, PCIA members participate in the LifePage program, whereby individuals awaiting organ donors are provided with paging service, at no cost, to notify them when a suitable organ becomes available. Because organ transplants often must be completed within a relatively short period of time after the organ becomes available, access to the LifePage service allows individuals greater flexibility to pursue normal daily activities, and not have to remain near a phone, waiting for it to ring. As customer use of systems continues to grow, and paging licensees are prevented from fully expanding their systems in the ways necessary to accommodate increased use, delays in transmission of pages will increase. These delays clearly could be significant in the case of LifePage users as well as in other emergency situations.

Most critically, during the pendency of the freeze, carriers cannot effectively meet consumer service needs. Customer coverage needs and service preferences undergo repeated changes. Shifts in population and business relocations require a carrier to add new coverage or upgrade existing service -- and if the coverage cannot be added, the customer can readily seek out a new provider.

By way of example, some regional licensees have entered into arrangements with a chain of stores or retailers to provide paging services wherever chain stores are located. These agreements contemplate that new stores will also receive service under the agreement. Depending upon the location of such new operations, the serving licensee may not be able to meet its contractual obligations to add coverage while the freeze is in place. Loss of these multi-site accounts can be significant for a carrier and disruptive for the customer as well.

For small carriers, the financial risks of this freeze are substantial. They may have to layoff personnel. If the freeze lasts long enough, the business itself may not survive. The Commission cannot have intended such far-ranging effects on the industry and the communities in which they operate.

After having commented favorably on the successful development of competition in the paging industry and the needs met by paging carriers as reflected by the dramatic increases in the number of subscribers, the imposition of the freeze, particularly if it is in place for more than a very abbreviated period, can seriously undercut the many benefits noted by the Commission. Paging licensees of all sizes and meeting all kinds of needs will be harmed, in turn adversely affecting the users of paging services. This result clearly is not consistent with the public interest to be promoted by the Commission.

E. The Freeze Has Substantial Adverse Effects on Eligible Business Licensees Operating Internal Paging Systems and on the Users of Carrier-Supplied Paging Services

As previously noted, private business eligibles are licensed on some of the Part 90 frequencies in order to operate internal paging operations. Many of those licensees are hospitals, medical centers, and schools. Some businesses likewise have found that internal paging systems are required or make economic sense in order to meet their operational needs. Like the operations of paging carriers, these systems also are frozen in place as a result of the Commission's action.

The impact of the freeze on these licensees is not only with respect to the economic choices involved in deciding to construct a private, internal paging system, but also significantly affects those entities that need a more rapid response time on their paging systems or greater control over their communications systems. Depending upon the nature of its existing operations, for example, a hospital expanding its operations or coordinating with other medical facilities may be barred from modifying its paging system to incorporate such area. Likewise, a medical center being relocated to new buildings may not be able to relocate its paging system at the same time. The freeze clearly impedes the ability of such licensees to meet their primary operational needs -- in the case of hospitals, providing medical service to the public. Other businesses that may not be engaged in such critically essential activities, however, also may suffer in the efficient management of their primary business activities.

Existing paging customers also will be adversely affected by the freeze as it now exists. For example, as noted above, in establishing service contracts with some businesses, paging licensees have entered into regional or nationwide service agreements that contemplate the addition of paging services when a business opens a new facility. Despite good faith reliance by customers that their existing service providers would be able to accommodate growth needs, the carriers are now prevented, in many cases, from doing so. Given the highly competitive nature of the paging industry, a customer may well decide to seek out another supplier that *can* meet the needs of the business for service.

F. Paging Equipment Manufacturers Will Be Adversely Affected During the Duration of the Freeze

Paging licensees and their customers are not the only entities suffering as a result of the freeze. Particularly if the freeze remains in place for a substantial period of time,²⁸ the manufacturers of equipment used by paging licensees (whether for carrier services or internal systems) expect that they will be adversely affected. Orders already placed by licensees in anticipation of the grant of applications that now will not be accepted or will not be processed in many circumstances are likely to be withdrawn until the licensee can be assured that it does not have to pay for equipment that will remain unused for months. Manufacturers will suffer lost profits and will have to

²⁸ As discussed in Section III.F *infra*, PCIA believes that there is a high likelihood that any freeze or other interim licensing process will last a significant period of time.

carry inventory during the pendency of the freeze that cannot be sold. If the freeze remains in place for substantial period of time (more than three months), manufacturers have estimated that it may be necessary to layoff employees. They also anticipate that company valuations by the stock market and financial analysts may be adversely impacted.

III. PCIA RECOMMENDS THAT THE FREEZE BE MODIFIED IN A NUMBER OF RESPECTS IN ORDER TO ACCOMMODATE LEGITIMATE PAGING LICENSEE NEEDS WHILE MINIMIZING THE EFFECT ON COMMISSION OBJECTIVES

PCIA and its members have evaluated the effect of the Commission's freeze and its plans for processing already filed applications in terms of the ability of licensees to continue to participate most effectively in the competitive paging marketplace and to meet the service needs of customers. PCIA also understands the Commission's perception that such action was necessary in order to facilitate the transition to market area licensing in at least some of the Part 22 and Part 90 frequency bands. In striving to reach a more successful balance of these competing considerations, however, PCIA believes that the freeze can and should be modified in a number of significant respects during the pendency of the underlying rulemaking -- with the end result that the public interest would be better served.

A. The Commission Should Immediately Lift the Freeze on the Acceptance and Processing of Applications for Shared Channels

As indicated above, the companies hardest hit by the freeze on applications for shared channels are the small paging operators and private licensees operating internal paging systems. Indeed, in the 929 MHz band, the Commission "decided to continue to designate five channels for shared use, to accommodate small and local systems operating on these frequencies that would not qualify for exclusivity in any event."²⁹ With respect to the small paging carriers, these companies do not have the resources to withstand the competitive harm they are likely to suffer as a result of the freeze. Moreover, consistent with the Commission's initiatives in other contexts, it seems that these are precisely the sort of operators the Commission would want to ensure continue to participate on an effective basis in the paging marketplace.

In previously considering how to improve the licensing process for Part 22 and Part 90 paging frequencies, the industry had reached consensus that only the 931 MHz frequencies currently were appropriate for a market area licensing scheme. There has been general agreement among paging licensees that the shared frequencies should *not* be included in any such plan. Given the shared use of the frequencies, the nature of

²⁹ *Amendment of the Commission's Rules To Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, FCC 96-53, n.2 (Feb. 13, 1996) (Memorandum Opinion & Order) ("*PCP Exclusivity Reconsideration Order*"), citing *Amendment of the Commission's Rules To Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, 8 FCC Rcd 8318, 8325 (1993) (Report and Order).

the existing licensees that operate on these channels, and the types of service areas currently found in these bands, market area licensing simply does not make sense. Indeed, as noted above, the shared 929 MHz frequencies were specifically set aside in the 929 MHz exclusivity proceeding to allow continued use by individual businesses and smaller operators that wanted to maintain their operations without the obligation to construct the wide area systems required to obtain exclusivity. Given the infeasibility of market area licensing for these channels, there is no apparent reason for imposing a freeze on the efforts of operators on the shared frequencies to continue to meet public service demands or to satisfy internal paging needs.

Moreover, because these channels are shared, mutual exclusivity cannot currently exist.³⁰ Thus, under the Communications Act, competitive bidding for authorizations in these frequencies is not currently permitted.³¹ It accordingly would be necessary for the Commission to convert the shared frequencies to exclusive use³² -- a step that would be highly disruptive and time consuming to implement, given the nature of current licensing of the channels.

³⁰ See Notice, ¶ 15 ("Because multiple licenses may be granted for the same channel, these PCP applicants have not been subject to competing applications or mutual exclusivity selection procedures, such as lotteries, comparative hearings, or auctions.").

³¹ 47 U.S.C. § 309(j)(1); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 9 FCC Rcd 2348, 2350-51 (1994).

³² See *id.*, ¶¶ 31-32.